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plemental agency agreement, made elsewhere, conditionally limiting commissions.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 606.]

2. Pleading (§ 99*)—Plea—Duplicity.—A plea of abatement on the ground of wrong venue, and on the ground of defendant's being immune from service of process when and where he was served, is bad for duplicity.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 220.]

3. Trial (§ 267 (4)*)—Instructions—Requests Covered by Instructions Given.—There is no reversible error in substituting for defendant's requested instruction another, which is a clear, correct, and adequate statement of the law from his standpoint, as applied to the facts of case.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 742.]

Error to Corporation Court of City of Lynchburg.

Action by the Southern Farm Agency against J. H. Fitzgerald. Judgment for plaintiff, and defendant brings error. Affirmed.

Byrd, Fulton & Byrd, of Richmond, *R. G. Hundley*, of Hopewell, and *Hubard, Gayle & Boatwright* of Buckingham, for plaintiff in error.

Aubrey E. Strode, of Amherst, for defendant in error.

WASHINGTON & OLD DOMINION RY. *v.* F. S. ROYSTER
GUANO CO.

Jan. 24, 1917.

[94 S. E. 763.]

1. Commerce (§ 27*)—Railroads—State Commissions—Jurisdiction.—That a side track will be used for interstate commerce as well as intrastate commerce does not deprive the State Corporation Commission of jurisdiction to compel the construction or extension of the same.

[Ed. Note.—For other cases, see 14 Va.-W. Va. Enc. Dig. 577, 578; 15 Va.-W. Va. Enc. Dig. 529.]

2. Railroads (§ 134 (1)*)—Lessees—Side Tracks.—Where, after lessee of a railroad took over the road, part of a side track burned, and the entire track was necessary, the lessee must rebuild, and it is immaterial that a certain concern will be especially benefited, as all are a part of the public and are entitled to equal facilities.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 616.]

3. Railroads (§ 216*)—Extension of Spur.—A railroad cannot re-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

fuse to extend a spur track because the person desiring the spur will ship products from another state, his competitors shipping from intrastate points, resulting in a decrease in revenue on account of more inadequate interstate rates.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 561.]

Petition by the F. S. Royster Guano Company before the state Corporation Commission to compel the extension by the Washington and Old Dominion Railway of a certain side track at Leesburg. From an order granting the prayer of the petition, the defendant brings up the case for review. Affirmed.

W. J. Lambert, of Washington, D. C., and *C. E. Nicol*, of Alexandria, for plaintiff in error.

C. J. Collins, of Norfolk, for defendant in error.

POCAHONTAS GUANO CO., Inc., v. SMITH et al.

Jan. 24, 1917.

[94 S. E. 769.]

Sales (§ 8*)—Distinguished from Del Credere Agency.—An agreement providing, among other things, that the consignor would ship certain fertilizers to be sold by the consignee as agents of the consignor, who was to receive the net proceeds of sale after deducting expenses and consignee's commission, that all fertilizers consigned were to remain the property of the consignor until sold, and that the proceeds of sale were to be the consignor's property to be accounted for as such by the consignees, who were to relinquish and assign all their interest in any lien, etc., taken by the consignees for goods sold or money loaned, to purchasers by consignees until amount due consignor was fully paid, held to show the existence of a del credere agency, and not a sale.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 6.]

Appeal from Circuit Court, Orange County.

Suit by the Pocahontas Guano Company, Incorporated, against one Smith, receiver, etc., and others. From the decree rendered, the former appeals. Reversed and remanded.

Shackelford & Shackelford, of Orange, for appellant.

Browning & Browning, of Orange, for appellees.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.